

United States District Court  
Central District of California

ANTWAREN ROBERTS,  
Plaintiff,

v.

JERRY BROWN; MATTHEW CATE;  
TODD RODIN; STEVEN HOLDER;  
RON HUGHES; K. SMITH; TODD  
LANSFORD; ARBI MASHI KAMALI;  
DANNY LEYVA; DOES 1–50;  
Defendants.

Case No. 2:13-cv-07461-ODW(JCx)

**ORDER DENYING MOTION FOR  
TEMPORARY STAY OF  
PROCEEDINGS [92]**

**I. INTRODUCTION**

Plaintiff Antwaren Roberts filed this civil-rights complaint against several California government and prison officials after Defendants Arbi Mashi Kamali and Danny Leyva stabbed him in his prison cell. After he filed suit, the State of California filed two criminal cases against Roberts arising out of different facts. Roberts has since filed this Motion seeking a temporary stay of this action pending resolution of those cases.

1 But the only overlap between this action and the criminal cases is the gang-  
 2 activity allegations. Due to that dissimilarity and the prejudice a stay would work  
 3 upon Defendant Todd Rodin, the Court **DENIES** Roberts's Motion.<sup>1</sup> (ECF No. 92.)

## 4 II. FACTUAL BACKGROUND

5 On October 8, 2013, Roberts—an admitted West Coast Crip gang member—  
 6 filed this action against several California government and prison officials arising out  
 7 of an incident in which Defendants Kamali and Leyva stabbed him in his cell at  
 8 California Men's Colony prison.

9 On December 4, 2013, Roberts was arrested and charged with violating  
 10 California Penal Code section 187(a) and 664 (attempted murder); 245(b) (assault  
 11 with a firearm); and 2900(a)(1) (possession of a firearm by a felon). (Mot. Ex. A);  
 12 *People v. Roberts*, No. SCD 252523 (S.D. Cnty. Super. Ct. Info. filed Dec. 27, 2013).  
 13 The State alleges that Roberts, along with other West Coast Crip gang members,  
 14 attempted to kill Krystal Sharkey—also a West Coast Crip gang member—by  
 15 shooting her multiple times in the chest. (Mot. Ex. A.) Sharkey was pregnant at the  
 16 time; both she and the baby survived. (*Id.*) Trial is currently set for August 18, 2014.

17 On April 17, 2014, Roberts was arraigned on a complaint in which the State has  
 18 charged Roberts with violating Penal Code sections 236 and 237 (false imprisonment  
 19 by violence); 186.22(a) (participation in a gang crime); and 182(a) conspiracy. *People*  
 20 *v. Roberts*, No. SCD 255207 (S.D. Cnty. Super. Ct. Compl. filed Apr. 9, 2014.) This  
 21 case involves allegations that Roberts participated in the beating of fellow inmate  
 22 Aovielle Barnes in February 2014. (Mot. Ex. B.) The state court has set trial for  
 23 September 15, 2014.

24 On April 23, 2014, the United States Attorney's Office for the Southern District  
 25 of California obtained an indictment against more than 17 West Coast Crip gang  
 26 members. The United States alleges that these individuals violated the Racketeer  
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28 <sup>1</sup> After considering the papers filed in support of, and in opposition to, the Motion, the Court deems  
 the matter appropriate for decision without oral argument. Fed. R. Civ. P. 78; L.R. 7-15.

1 Influenced Corrupt Organizations Act, 18 U.S.C. § 1962(d). Roberts is not named in  
 2 the indictment, but the United States did include Roberts' San Diego state criminal  
 3 case as part of the allegations of criminal gang activity.

4 On June 19, 2014, Roberts moved to stay this action pending resolution of two  
 5 criminal cases pending against him. (ECF No. 92.) Defendant Todd Rodin timely  
 6 opposed. (ECF No. 93.) That Motion is now before the Court for decision.

### 7 **III. LEGAL STANDARD**

8 The Constitution does not ordinarily require a stay of civil proceedings pending  
 9 the outcome of related criminal proceedings. *Keating v. Office of Thrift Supervision*,  
 10 45 F.3d 322, 324 (9th Cir. 1995.) It is constitutionally permissible for a defendant to  
 11 have to choose between testifying in a civil matter and asserting his Fifth Amendment  
 12 privilege. *Id.* While a stay is an "extraordinary remedy that should be granted only  
 13 when justice so requires," *Chao v. Fleming*, 489 F. Supp. 2d 1034, 1037 (W.D. Mich.  
 14 2007), a court may decide in its discretion to stay civil proceedings when the interests  
 15 of justice require it. *Federal Sav. & Loan Ins. Corp. v. Molinaro*, 889 F.2d 899 (9th  
 16 Cir. 1989).

17 In deciding whether to stay civil proceedings in light of parallel criminal  
 18 proceedings, courts consider the following six factors: (1) the extent to which the  
 19 defendant's Fifth Amendment rights are implicated; (2) the plaintiff's interests in  
 20 proceeding expeditiously and potential prejudice resulting from a delay; (3) judicial  
 21 efficiency; (4) the interests of nonparties; and (5) the public's interests in the pending  
 22 civil and criminal litigation. *Keating*, 45 F.3d at 324–25.

### 23 **IV. DISCUSSION**

24 Citing self-incrimination concerns, Roberts moves to stay this civil action  
 25 pending resolution of his two San Diego County criminal cases, which should be  
 26 resolved by the end of September 2014. Rodin opposes the Motion, arguing that  
 27 courts only stay civil cases pending related criminal cases when the defendant—not  
 28 the plaintiff—in the civil action is subject to Fifth Amendment concerns. The Court

1 agrees with Rodin that the Ninth Circuit’s test expounded for this situation does not  
2 weigh in Roberts’s favor.

### 3 **A. Implication of Fifth Amendment rights**

4 While the extent to which a defendant’s Fifth Amendment rights are implicated  
5 is a significant factor, it is only one consideration to be weighed against the other five  
6 factors. *Keating*, 45 F.3d at 326. Courts have recognized that there is a strong case in  
7 favor of a stay after a grand jury returns a criminal indictment and where there is a  
8 large degree of overlap between the facts involved in both cases. *See Molinaro*, 889  
9 F.2d at 903; *Sec. & Exch. Comm’n v. Dresser Indus.*, 628 F. 2d 1368, 1375–76 (D.C.  
10 Cir. 1980); *Chao v. Fleming*, 498 F. Supp. 2d 1034, 1037 (W.D. Mich. 2007);  
11 *McCormick v. Rexroth*, No. C 09-4188 JF, 2010 WL 934242, at \*2 (N.D. Cal. Mar.  
12 15, 2010). But a stay is not warranted where a defendant’s Fifth Amendment rights  
13 can be protected “through less drastic means, such as asserting the privilege on a  
14 question-by-question basis . . . .” *Doe v. City of San Diego*, No. 12-cv-689-MMA-  
15 DHB, 2012 WL 6115663, at \*2 (S.D. Cal. Dec. 10, 2012).

16 While a defendant in a criminal case may constitutionally assert her Fifth  
17 Amendment rights with no adverse consequence, a trier of fact in a civil case may  
18 draw an adverse inference from invocation of the Fifth Amendment. *Doe ex rel.*  
19 *Rudy-Glanzer v. Glanzer*, 232 F.3d 1258, 1264 (9th Cir. 2000). But the Ninth Circuit  
20 has recognized that this consequence alone does not compel a stay pending the  
21 outcome of a related criminal case. *Keating*, 45 F.3d at 326.

22 Roberts argues that, while the facts involved in the criminal cases do not arise  
23 out of the same set of facts as this action, they all involve gang-activity allegations,  
24 including gang activity inside California state jails. Roberts contends that having to  
25 answer gang-related questions could subject him to life in prison due to the gang-  
26 enhancement charges alleged in the state-court cases.

27 Rodin points out that the dissimilarity between the civil and criminal cases  
28 counsels against a stay, as they are only “marginally” related. Rodin also notes that

1 Roberts admitted in his Second Amended Complaint that he is a San Diego Crip gang  
2 member.

3 The Court agrees with Rodin. While both the civil and criminal cases involve  
4 gang-related-activity allegations, the similarities end there. This is not a situation  
5 where the civil and criminal cases are essentially carbon copies of each other. Rather,  
6 Roberts filed this civil action months before the criminal conduct alleged in the two  
7 state-court cases. Allowing a stay when there is such slight similarity between cases  
8 would eviscerate this element of the *Keating* rubric.

9 Moreover, if Roberts does encounter a discovery request in this action that  
10 could inculcate him in criminal activity, he can simply invoke the Fifth Amendment  
11 Privilege Against Self-Incrimination so long as he has not waived it. That ability  
12 therefore mollifies any incrimination concerns.

13 **B. Prejudice to plaintiff**

14 Courts have recognized that a civil plaintiff has an interest in having her case  
15 resolved quickly. *See S.E.C. v. Loomis*, No. 2:10-cv-00458-KJM-KJN, 2013 WL  
16 4543939, at \*2 (E.D. Cal. Aug. 27, 2013.) Courts have also recognized that there may  
17 be prejudice to a plaintiff where a stay of discovery might result in her inability to  
18 locate other potential defendants. *See Gen. Elec. Co. v. Liang*, No. CV 13-08670  
19 DDP(VBKx), 2014 WL 1089264, at \*4 (C.D. Cal. Mar. 19, 2014).

20 Roberts contends that this element weighs in his favor because he is the plaintiff  
21 in this action and is willing to accept any prejudice that will result from a stay. But  
22 Rodin argues that the Court should analyze this factor with respect to him, as he is the  
23 one who would have to await resolution of the criminal cases before adjudicating his  
24 potential liability in this action.

25 Rodin's point is well taken. The several Ninth Circuit cases invoking the  
26 *Keating* analysis have involved a defendant in a civil action seeking to stay the civil  
27 case pending resolution of a nearly identical criminal case. The prejudice-to-the-  
28 plaintiff element therefore addresses the effect on the person who would have to wait

1 for justice while the criminal case chugged along. Here, Rodin is the person who  
2 would have to sit idly by until the state court resolves Roberts's criminal cases. While  
3 Roberts anticipates that those trials will be finished by the end of September, it would  
4 not be surprising if the trials were continued for any number of reasons. Rodin has a  
5 strong interest in determining his potential liability in this action quickly. A stay  
6 would prejudice that interest.

7 **C. Burden on criminal defendant**

8 Courts have found that even when a defendant's Fifth Amendment rights are  
9 implicated, this factor does not support granting a stay unless the defendant can show  
10 other "compelling factors as described in *Keating*." See *Gen. Elec. Co.*, 2014 WL  
11 1089264, at \*5.

12 Roberts has not demonstrated any other compelling reasons for a stay,  
13 especially since he can invoke the Fifth Amendment during discovery.

14 **D. Judicial efficiency**

15 Courts have recognized that this *Keating* factor normally does not favor  
16 granting a stay, because "the court has an interest in clearing its docket." *Molinaro*,  
17 889 F.2d at 903.

18 It would of course be inefficient for the Court to stay this case pending the  
19 resolution of not one but two criminal cases. This factor is especially compelling in  
20 this situation because the Court has already had to resolve several motions and other  
21 procedural issues, and this case only recently emerged from the motion-to-dismiss  
22 stage.

23 **E. Public's interest**

24 The public has a demonstrated interest in having the Court as an institution  
25 quickly and efficiently resolve the disputes before it. A stay would run counter to that  
26 interest.

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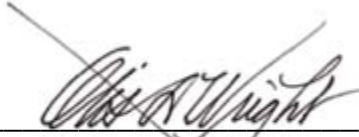
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1 **V. CONCLUSION**

2 For the reasons discussed above, the Court **DENIES** Roberts's Motion for  
3 Temporary Stay of the Proceedings. (ECF No. 92.)

4 **IT IS SO ORDERED.**

5  
6 July 14, 2014

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9 **OTIS D. WRIGHT, II**  
10 **UNITED STATES DISTRICT JUDGE**  
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